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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,682	11/09/2001	Michel Schmidt	11954-1920	9711

7590 10/21/2005

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EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/044,682	Applicant(s) SCHMIDT ET AL.	
Examiner David J. Parsley	Art Unit 3643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-8, 10-13 and 21-24.
Claim(s) objected to: _____.
Claim(s) rejected: 14, 15 and 25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


PETER M. POON
SUPERVISORY PATENT EXAMINER

10/18/05

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are not persuasive in that applicant argues that in relation to claims 14-15, the combination of the Meyn reference EP 1038443 and the Varner reference US 3137030 is improper in that each of these references discloses devices which have differing functions. However, as seen in figure 1 of the Meyn reference the device is an assembly which suspends animal carcasses whose legs are placed in openings -at 3 as seen in figure 1 and the Varner reference discloses a device used to suspend animal carcasses whose legs are at least partially placed in the openings proximate item - 17 as seen in figure 2, Therefore, it is deemed that each device has similar function in that both the Meyn and Varner devices are used to suspend animal carcasses and therefore the combination of these references is deemed proper. Applicant argues that the present invention does not involve slitting the legs of the animal carcass to hold the animal carcass to the device as seen in figure 2 of Varner. However, as seen in figure 2 of the Varner reference even though the leg of the animal carcass is slit by the device the leg is still held in place in the opening proximate - 17 to suspend the carcass from the device. Regarding claim 25, applicant argues that the combination of the Meyn reference and the Berry reference US 5514033 is improper in that the Berry device teaches away from the Meyn device in that the Berry device does not disclose open ended slots for receiving legs of the animal carcasses. However, the Meyn device and not the Berry device is used to disclose the open ended slots with the Berry reference only being used to show the slots converging from one end to the other end. Further, the Berry reference does disclose open ended slots in that the slots formed proximate 23'-27' in figure 6D shows slots open at the end proximate item 23' at one end and open proximate 28' at the other end in that at the end proximate 28', an opening is formed between items 24' and 26' and another opening is formed between items 25' and 27' as seen in side views of the device shown in figures 6B and 6C. Therefore the combination of the Meyn and Berry references is deemed proper .